



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105-3901**

**JUN 05 2006**

**CERTIFIED MAIL NO. 7003 3110 0006 2000 8281  
RETURN RECEIPT REQUESTED**

In Reply: AIR-5  
Refer To: Docket No. R9-2006-0012

William Lopes  
West Coast Regional Manager  
Foam Fabricators, Inc.  
1810 South Santa Fe Avenue  
Compton, CA 90221

Dear Mr. Lopes:

Enclosed is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") is issuing to Foam Fabricators, Inc. ("Foam Fabricators") pursuant to Section 113 (a) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a). The NOV is intended to notify Foam Fabricators of EPA's finding that Foam Fabricators has been and is in violation of the Act and the federally approved and federally enforceable State Implementation Plan for the South Coast Air Quality Management District ("SIP") at the expanded polystyrene foam products manufacturing facility in Compton, California (the "facility").

You should be aware that Section 113(a) of the Act provides that 30 days after the issuance of the NOV, EPA may issue an Order requiring compliance with the requirements of the SIP, issue an Order assessing a civil administrative penalty, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, Section 113(c) of the Act provides for criminal penalties in certain cases.

Upon a finding of adequate evidence of a continuing violation, EPA may place Foam Fabricators on the List of Violating Facilities. See Section 306 of the Act and the regulations promulgated in 40 C.F.R. Part 32. Such facility would be declared ineligible for participation in any federal contract, grant, loan, or subagreement thereunder.

If you wish to discuss the NOV, you may request a conference with EPA. The conference will afford Foam Fabricators an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please have Foam Fabricators' attorney contact Margaret Alkon, Office of Regional Counsel, at (415) 972-3890, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 business days after receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Jordan", written in a cursive style.

Deborah Jordan  
Director, Air Division

Enclosures

cc: Dr. Barry Wallerstein, SCAQMD  
Jim Ryden, CARB  
Curtis Coleman, Esq.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of	)	
	)	Docket No. R9-2006-0012
Foam Fabricators, Inc.	)	
Vernon, California	)	
	)	NOTICE OF VIOLATION
	)	
Proceeding Under Section	)	
113(a), Clean Air Act, as Amended	)	
_____	)	

This Notice of Violation ("NOV") is issued to Foam Fabricators, Inc. ("Foam Fabricators") for violations at its facility located in Compton, California (the "facility"). The NOV is issued pursuant to Section 113(a)(1) of the Clean Air Act (the "Act"), as amended, 42 U.S.C. §§ 7401-7671q. Section 113(a)(1) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a permit or a state implementation plan ("SIP") of the violations.

The authority to issue this NOV has been delegated to the Director, Air Division, EPA, Region 9. Pursuant to this delegated authority, the Director hereby notifies you that Foam Fabricators has been and is in violation of Rule 1175 (Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products) as incorporated into the federally approved SIP for California and specifically for the South Coast Air Quality Management District (the "District").

**STATUTORY AND REGULATORY AUTHORITY**

**National Ambient Air Quality Standards**

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants, including ozone. 40 C.F.R. §§ 50.9, 50.10.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the California AQCRs are listed at 40 C.F.R. § 81.305.
3. The facility is located in Compton, in Los Angeles County, California, which is in the Los Angeles Air Basin. EPA designated the Los Angeles Air Basin as a part 2 severe-17 nonattainment area for the 8-hour NAAQS for ozone. 40 C.F.R. § 81.305.
4. Ground-level ozone is formed when volatile organic compounds ("VOCs") react with nitrogen oxides in the presence of sunlight. As a precursor to ozone, VOCs are one of the regulated pollutants relating to the ozone NAAQS. 40 C.F.R. Part 58, App. D, Section 2.5.

#### **State Implementation Plan**

5. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the "applicable implementation plan" (or "SIP") for the state.
6. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a permit program as provided in Part C and Part D of Title I of the Act (hereinafter "Parts C and D"), 42 U.S.C. §§ 7470-7492 and §§ 7501-7515, respectively. Parts C and D require the issuance of permits prior to the construction or operation of a new source or modification in an attainment or nonattainment area, respectively. Any such permits must include, among other things, Best Available Control Technology ("BACT") (in attainment areas) or Lowest Achievable Emission Rate ("LAER") (in nonattainment areas) for the pollutant of concern. 42 U.S.C. §§ 7475(a)(4) and 7503(a)(2).

7. Failure to comply with any provisions of a SIP, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into a SIP renders the person so failing to comply subject to enforcement actions under section 113 of the Act. 40 C.F.R. § 52.23.

#### **The District's Rule 1175**

8. At all times pertinent to the events described herein, Rule 1175 (Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products) was part of the federally approved and federally enforceable SIP submitted to EPA by the State of California pursuant to 42 U.S.C. § 7410 and Parts C and D. See 59 Fed. Reg. 43,751 (Aug. 25, 1994).
9. SCAQMD Rule 1175 states that the owner or operator of an EPS molding facility "shall demonstrate . . . that manufacturing and post-manufacturing emissions, *assuming all the blowing agent is released from the product*, are less than 2.4 lbs [of VOCs] per 100 lbs of raw material processed." Rule 1175(c)(2) (emphasis added). SCAQMD rules define manufacturing emissions as "any emissions of VOC . . . that occur . . . during every step of the processing of polymeric material from delivery of the raw material, until the storage of the final cellular product." Rule 1175(b)(6)-(7).
10. If the owner or operator of an EPS foam molding facility fails to demonstrate compliance with Rule 1175(c)(2), Rule 1175(c)(4) requires the owner or operator to install and operate an "approved emissions control system" within 12 months. To be "approved", the emissions control system must satisfy the following requirements: (1) all sources of manufacturing emissions must be "vented only to the approved emissions control system," Rule 1175(c)(4)(B)(i); (2) the emissions collection system must collect at least 90% by weight of the manufacturing emissions, Rule 1175(b)(1)(A); and (3) the emissions control

device must reduce emissions from the collection system by at least 95% by weight, Rule 1175(b)(1)(B).

11. In addition, Rule 1175(c)(4)(B)(ii) requires owners and operators of EPS molding facilities processing more than 800,000 pounds of raw material per year to ensure that all emissions from the final manufactured product are vented only to the approved emissions control system for at least 48 hours.

#### **Facility Permit to Operate**

12. Title V of the Act sets forth the requirements for the federal operating permit program. 42 U.S.C. §§ 7661-7661f. Section 502(a) of the Act states that it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the Act. 42 U.S.C. § 7661a(a).
13. Pursuant to title V of the Act, EPA's Administrator approved District Regulation XXX as the District's title V operating permit program. See 40 C.F.R. Part 70, App. A; 68 Fed. Reg. 65637 (November 21, 2003); and 66 Fed. Reg. 63503 (December 7, 2001).
14. The Administrator may enforce requirements of permits to operate issued pursuant to a program approved under title V of the Act by issuance of an administrative penalty order, issuance of an order requiring such person to comply with such requirement or prohibition, or initiation of a civil action (or requesting the Attorney General to commence a criminal action). See 42 U.S.C. § 7413(a)(3).

#### **FINDING OF FACTS**

15. Foam Fabricators is the owner and operator of a facility that manufactures EPS foam products in Compton, California.
16. The facility was issued a Permit to Operate on August 1, 2002, under the District's title V operating permit program. The facility Permit to Operate states that the facility is subject

to the emission limits of Rule 1175, and that Rule 1175 is federally enforceable.

17. Since January, 2002, manufacturing and post-manufacturing emissions at the facility are more than 2.4 lbs of VOCs per 100 lbs of raw material processed.
18. In each month of 2002, 2003, and 2004, the facility had emissions in excess of 2.4 lbs of VOC emitted per 100 lbs of EPS beads processed.
19. The facility processes more than 800,000 pounds of raw material per year. The facility processed more than 800,000 pounds of raw material in each of 2002, 2003, and 2004.
20. Manufacturing emissions from the final manufactured product at the facility are **not** vented to the emissions control system, and the facility does not have 48 hour post-manufacturing storage and capture of emissions.
21. The facility's Permit to Operate contains a permit condition requiring that the facility's emission collection system shall collect at least 90% of the manufacturing emissions by weight and the thermal oxidizer shall reduce emissions from the emission collection system by at least 95% by weight.
22. The results of a June 30, 2004 source test conducted by Almega Environmental & Technical Services reported that, viewed in the light most favorable to the facility (i.e., calculations based upon raw bead pentane content of 2.28 pounds), the collection efficiency of the facility's emission collection system was 84.2% and the destruction efficiency was 74.9%.
23. The results of a May 12-13, 2005 source test conducted by Almega Environmental & Technical Services reported that the capture efficiency of the facility's emission collection system was 27.4 % and the destruction efficiency was 11.5%.



## **FINDING AND NOTICE OF VIOLATIONS**

### **Rule 1175**

24. Foam Fabricators has failed to demonstrate that manufacturing and post-manufacturing emissions of VOCs, assuming all blowing agent is released from the product, are less than 2.4 lbs/100 lbs foam, in violation of Rule 1175(c)(2).
25. Foam Fabricators has failed to install an approved emissions control system as required by Rule 1175(c)(4)(B)(i).
26. Foam Fabricators has failed to ensure that post-manufacturing emissions from all finished foam products are vented to emissions control system for at least 48 hours, in violation of Rule 1175(c)(4)(B)(ii)(I).
27. Foam Fabricators is operating the facility in violation of Rule 1175.

### **Permit Violations**

28. Foam Fabricators has violated its Permit to Operate because the facility's emission collection system fails to collect at least 90% of the manufacturing emissions by weight and the thermal oxidizer fails to reduce emissions from the emission collection system by at least 95% by weight.

## **ENFORCEMENT**

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, and not more than \$27,500 per day for each violation that occurred between January 30, 1997 and March 15, 2004, and \$32,500 per day



for each violation occurring after March 15, 2004, 42 U.S.C. § 7413(a)(1) and (b)(1); 40 C.F.R. Part 19.

Furthermore, if any person knowingly violates any federal regulation or permit requirement more than 30 days after the date of issuance of this NOV, Section 113(c) provides for criminal penalties, imprisonment or both.

Under Section 306, the regulations promulgated thereunder (40 C.F.R. Part 32), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

#### **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, the days of violation shall be presumed to include the date of the NOV and each and every day thereafter until Foam Fabricators establishes that continuous compliance has been achieved, except to the extent that Foam Fabricators can prove by the


preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

#### **OPPORTUNITY FOR CONFERENCE**

Foam Fabricators may, upon request, confer with EPA. The conference will enable Foam Fabricators to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If such conference is held, Foam Fabricators may be represented by counsel. **A request for a conference must be made within 10 working days of receipt of this NOV**, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Margaret Alkon  
Office of Regional Counsel  
U.S. EPA (ORC-2-2)  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-1392

Dated: June 1, 2006

  
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Deborah Jordan  
Director, Air Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

JUN 05 2006

Dr. Barry Wallerstein  
Executive Officer  
South Coast Air Quality Management District  
21865 E. Copley Drive  
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

Enclosed for your information is a copy of a Notice of Violation ("NOV") issued by the United States Environmental Protection Agency ("EPA") to Foam Fabricators, Inc. ("Foam Fabricators"), pursuant to Section 113(a) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a). The NOV is intended to notify Foam Fabricators of EPA's finding that Foam Fabricators has been and is in violation of the Act and the federally approved and federally enforceable California State Implementation Plan ("SIP") at the expanded polystyrene foam products manufacturing facility in Compton, California (the "facility").

Section 113(a)(1) of the Act, as amended (42 U.S.C § 7413(a)(1)), provides in part:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

The Act further provides that after 30 days from the date of issuance of this NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act. 42 U.S.C. § 7413(a)(1).

The NOV informs the facility that a conference on the matter may be arranged by making a request to this office within 10 business days after receipt of the NOV. Please contact Margaret Waldon of the Enforcement Office at (415) 972-3987 if you have any questions regarding the NOV.

Sincerely,

  
Deborah Jordan  
Director, Air Division

cc: Jim Ryden, CARB